

IN THE SUPREME COURT OF MISSOURI

DAVID SPRADLING (deceased),)	
)	
LEE SPRADLING, BRITTINEE)	
SPRADLING and MARINDA)	
SPRADLING)	
)	
Respondents)	Case No. SC93407
)	
vs.)	Injury No. 98-105462
)	
CLINT ZWEIFEL, TREASURER OF)	
THE STATE OF MISSOURI AS)	
CUSTODIAN OF THE SECOND)	
INJURY FUND)	
)	
Appellant)	

Appeal from the Labor and Industrial Relations Commission

Substitute Respondents' Brief

Respectfully submitted by:

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JURISDICTIONAL STATEMENT

This appeal is before the Missouri Supreme Court upon the Application for Transfer filed by the Second Injury Fund after opinion of the Missouri Court of Appeals, Southern District pursuant to Rule 83.04 and Article V, Section 10 of the Missouri Constitution. All decisions of the Labor and Industrial Relations Commission are reviewable by the court of appeals pursuant to Section 287.495.1 RSMo.¹ This Court granted transfer and now has jurisdiction of the appeal.

The appellate court affirmed the Commission's award of permanent total disability compensation to Respondents for life following the Division of Workers' Compensation Award of the Administrative Law Judge finding that prior to his death, Employee David Spradling had attained maximum medical improvement, was permanently and totally disabled and that Respondents were entitled to payment of his permanent and total disability benefits, for life, from the Second Injury Fund under Section 287.230.2 RSMo. and *Schoemehl v. Treasurer of the State of Missouri*, 217 S.W.3d 900 (Mo. banc 2007).

¹All statutory citations are to the Missouri Revised Statutes 1998, unless otherwise indicated.

STANDARD OF REVIEW

The standard of review set forth in the Missouri Constitution, Article V, Section 18, for judicial review of the Commission’s award is a determination of whether the award is “supported by competent and substantial evidence upon the whole record.” *Hampton v. Big Boy Steel Erection*, 121 S.W.3d 220, 222 (Mo. banc 2003). “In the absence of fraud, the findings of fact made by the Commission within its powers shall be conclusive and binding. The court on appeal, shall review only questions of law and may modify, reverse, remand for rehearing, or set aside the award upon any of the following grounds and no other:

- (1) That the Commission acted without or in excess of its powers;
- (2) That the award was procured by fraud;
- (3) That the facts found by the Commission do not support the award;
- (4) That there was not sufficient competent evidence in the record to warrant making the award.” Section 287.495.1 RSMo.; *Hampton*, 121 S.W.3d at 222. Questions of law are reviewed *de novo*. *Pierce v. BSC, Inc.*, 207 S.W.3d 619, 621 (Mo. banc 2006).

The workers’ compensation law is to be “liberally construed with a view to the public welfare.” Section 287.800 RSMo. Any doubt as to the right of an employee to compensation should be resolved in favor of the injured employee. *Wolfgeher v. Wagner Cartage Service, Inc.* 646 S.W.2d 781, 783 (Mo. banc 1993).

RESPONSIVE ARGUMENT

The Labor and Industrial Relations Commission did not err in awarding permanent total disability compensation to Respondents for life because the cessation of benefit provisions of Section 287.240(4)(a) and (b) are specific to injury-related “death benefits” rather than *permanent total disability compensation* which is the subject of this claim in that: Respondents were determined to be the dependents of David Spradling at the time of the work injury; David Spradling was found to be permanently and totally disabled as a result of the primary work injury in combination with his pre-existing disabilities and awarded permanent total disability compensation from the Second Injury Fund for the remainder of his life; and upon the death of David Spradling, these Respondents stepped into his “employee” shoes and became entitled to the lifetime award of permanent total disability compensation.

This claim involves the continuation of an award of permanent total *disability compensation* following a death unrelated to the work injury pursuant to Section 287.230.2 RSMo.² - not an award of injury-related “death benefits” under Section 287.240 RSMo. This distinction is of the utmost importance in assessing the propriety of the award of the Commission under review by this Court.

²Sometimes referred to as *Schoemehl* benefits.

Existing Award:

The injured Employee in this matter, David Spradling, was determined to be permanently and totally disabled from his pre-existing disabilities in combination with his disability resulting from the work injury of September 1998 and awarded permanent total disability compensation for life from the Second Injury Fund. (LF 87) David Spradling died in November of 2005, while his claim for compensation was pending but his death was unrelated to his 1998 work injury. (Tr. 34; LF 71) His children pursued his claim for compensation to trial in 2011 wherein they were awarded his permanent total disability compensation, for life. (LF 71, 88).

Schoemehl Benefits under “Unrelated Death” Provisions of Section 287.230:

The question of “whether the right to compensation for PTD of an injured employee, who has died from causes unrelated to the work-related injury, survives to the dependents of that injured employee” was first answered by this Court in *Schoemehl v. Treasurer of the State of Missouri*, 217 S.W.3d 900 (Mo. banc 2007). *Schoemehl* established “survivorship rights for permanent total disability awards under section 287.230.” *Taylor v. Ballard R-II School District*, 274 S.W.3d 629, 633 (Mo. App. W.D. 2009). The *Schoemehl* Court “[read] the provisions of sections 287.020³, 287.200⁴ and

³Section 287.020 defines “employee” and provides that “any reference to any employee who has been injured shall, when the employee is dead, also include his dependents, and other persons to whom compensation may be payable.”

⁴Section 287.200 states that “[c]ompensation for permanent total disability shall be paid during the continuance of such disability for the lifetime of the employee”

287.230⁵ together, [and] ruled that ‘when [an employee] has been awarded [permanent total disability] benefits and subsequently dies of a cause unrelated to the work injury, the [employee’s] dependents are entitled to receive the awarded benefits for their lifetime.’” *Taylor*, 274 S.W.3d at 633 (citing *Buesher v. Mo. Highway & Transp. Comm’n*, 254 S.W.3d 105, 106 (Mo. App. W.D. 2008)).

‘Dependent’ is defined to mean a relative by blood or marriage of a deceased Employee, who is actually dependent for support, in whole or in part, upon the Employee’s wages at the time of the injury. Section 287.240(4) RSMo.; *Schoemehl*, 217 S.W.3d at 902. “Status as a dependent [is] set on the date of injury.” *Gervich v. Condaire, Inc.*, 370 S.W.3d 617, 624 (Mo. banc 2012). “As such, any ‘dependent’ would have to be born and dependent at the time of the injury.” *Schoemehl*, 217 S.W.3d at 902.

Under this statutory construct, the dependents assume the injured worker’s place and become the employee for purposes of receiving permanent total disability compensation. *Schoemehl*, 217 S.W.3d at 901-902. The permanent total disability compensation is “paid to the employee’s dependents for their lifetime because the surviving dependents are deemed to have the same rights as the employee under the Workers’ Compensation Law.” *Buescher*, 254 S.W.3d at 108.

Respondents are entitled to the permanent total disability compensation awarded by the Commission because their father, David Spradling was entitled to permanent total disability compensation, for life. (LF 87-88) He subsequently died from a cause other

⁵Under Section 287.230.2, when an Employee is entitled to compensation and death ensues from a cause other than the work injury, “payments of the unpaid and unaccrued balance for the injury shall cease and all liability therefor shall terminate *unless there are surviving dependents at the time of death.*”

than his work injury while survived by his three dependent children. (Tr. 34) On the date of David Spradling’s work accident (September 3, 1998), he was single and unmarried (Tr. 19, line 22-23; Tr. 23, line 23-25) with three children under the age of 18: Lee Spradling (dob 07/23/1986)(Tr. 36), Brittinee Spradling (dob 02/08/1991)(Tr. 37) and Marinda Spradling (dob 02/25/1993)(Tr. 39-42). These children are the Respondents herein. Each Respondent was born and dependent at the time of the injury. Collectively, they have stepped into their father’s shoes and have statutorily taken David Spradling’s place as the employee. The Commission’s award of permanent total disability compensation to these Respondents, for life, is entirely consistent with prior case law interpreting these statutes and applying *Schoemehl*.⁶

Schoemehl and it’s progeny:

The award of the Commission herein is in line with all appellate decisions providing permanent total disability compensation to surviving dependents as employees under the unrelated-death provisions of Section 287.230.2 RSMo. and *Schoemehl*.

***Schoemehl v. Treasurer of Missouri*, 217 S.W.3d 900 (Mo. banc 2007):**

Ann Schoemehl was awarded permanent total disability benefits *during her lifetime* as the surviving dependent and employee ‘entitled’ to payment of the unpaid and unaccrued balance of Fred Schoemehl’s permanent total disability award under section 287.230.2. *Id.* at 903.

***Strait v. Treasurer of Missouri*, 257 S.W.3d 600 (Mo. banc 2008):**

The Court remanded the case to the Commission with instructions to grant

⁶The Western District, Court of Appeals decision in *White v. University of Missouri*, 375 S.W.3d 908 (Mo. App. W.D. 2012) is inconsistent but no benefits were awarded in that case as the issue was not ripe for adjudication.

benefits to the minor dependent children as of the date of Rosalyn Strait’s death. *Id.* at 603. The amended award then issued by the Commission identified Joshua Neal Strait and Mick Tyler Strait as “the employee” who was awarded benefits beginning January 28, 2007 and *continuing for employee’s lifetime*. *Strait v. Treasurer of Missouri*, 2008 WL 4657957 (LIRC October 2008).

***Taylor v. Ballard R-II School District*, 274 S.W.3d 629 (Mo. App. W.D. 2009):**

The Commission’s decision was affirmed as to the award of permanent total disability benefits to Employee Glennnda Taylor but remanded with an order to grant those benefits to her surviving husband Marvin Taylor, *for his lifetime*. *Id.* at 636.

***Tilley v. USF Holland, Inc.*, 325 S.W.3d 487 (Mo. App. E.D. 2010):**

The Commission was found to have correctly ruled that Employee’s benefits would survive to his Wife *for her lifetime*. *Id.* at 494.

***Goad v. Treasurer of Missouri*, 372 S.W.3d 1 (Mo. App. W.D. 2011):**

The Western District Court of Appeals reversed the Commission’s final award and allowed Mr. Goad the continuation of permanent total disability benefits after the death of his wife, *for his lifetime*. *Id.* at 11.

***Gervich v. Condaire, Inc.*, 370 S.W.3d 617 (Mo. banc 2012):**

Ms. Gervich was entitled to the continued payment of her husband’s permanent total disability benefits *for the remainder of her life*. *Id.* at 623.

In each case, the injured employee was entitled to permanent total disability compensation but suffered an unrelated death leaving surviving dependents to whom the permanent total disability benefits were continued for life - as measured by the life of the surviving

dependent(s). The awards in those cases were proper and the Commission’s award to these Respondents is proper. This Court should affirm the award of the Commission in this matter.

Death Benefits under “Injury-related Death” Statute (Section 287.240):

The Second Injury Fund suggests that the question before this Court is “[w]hether sec. 287.240(4) provides workers’ compensation benefits to children of a deceased claimant beyond the children’s attainment of 18 years of age.” (SIF substitute brief pg. 9).

If that were the question, Respondents would concede because Section 287.240(4) provides for “*death benefits*” payable because the work injury resulted in death but - Respondents are not claiming death benefits under Section 287.240(4). “*Death benefits*” to a dependent child as the result of a *work-related death* cease when the dependent child attains the age of 18 (absent special circumstances inapplicable here like being a full-time student, member of the armed forces, or incapable of wage earning etc). But, “*death benefits*” for a work-related death under the injury-related death statute (Section 287.240) are not the same as *permanent total disability benefits* which continue following an employee’s unrelated death pursuant to Section 287.230.2, if there are surviving dependents at the time of death.

Section 287.240 is the “injury-related *death*” statute providing “*death benefits*” for a work-related death. Section 287.240 identifies to whom compensation is paid in the event the *work injury results in death*. The permanent total disability benefits awarded to Respondents by the Commission are not derived through the injury-related death statute (Section 287.240) but through the unrelated-death provisions of Section 287.230.2 RSMo.

The injury-related death statute (Section 287.240) is only applicable to the instant case to the extent that it contains the chapter-wide definition of “dependent” as cited by *Schoemehl*:

(4) The word “dependent” *as used in this chapter* shall be construed to mean a relative by blood or marriage of a deceased Employee, who is actually dependent for support, in whole or in part, upon his or her wages at the time of the injury. Section 287.240(4); *Schoemehl*, 217 S.W.3d at 902.

Otherwise, the injury-related death statute (Section 287.240) informs of the circumstances under which “*death benefits*” continue or stop for dependents of an employee who died as the result of a *work-related injury*.

Plain Language:

The Second Injury Fund argues that the “plain language” of the cessation of *death benefit* provisions of the injury-related death statute (Section 287.240) are applicable to Respondents’ award of permanent total disability compensation following an unrelated death. To the contrary, the plain language of Section 287.240 uses the phrase “*death benefits*” at least 15 different times to identify the compensation to which dependents of a deceased employee may be entitled, provided the work injury resulted in death. Furthermore, the plain language used in sub-sections (a) and (b) of Section 287.240(4) (the two provisions regarding cessation of benefits) is also particularly specific to “*death benefits*” - benefits payable for a work-related death:

(a) . . . provided that on the death or remarriage of a widow or widower, the *death benefit* shall cease unless there be other total dependents entitled to any “*death benefits*” under this chapter . . .

(b) . . . [t]he payment of “*death benefits*” to a child or other dependent as provided in this paragraph shall cease when the dependent dies, attains the age of eighteen years, or becomes physically and mentally capable of wage earning over that age, or until twenty-two years of age if the child of the deceased is in attendance and remains as a full-time student in any accredited educational institution, or if at eighteen years of age the dependent child is a member of the armed forces of the United States on active duty; provided, however, that such dependent child shall be entitled to compensation during four years of full-time attendance at a fully accredited educational institution to commence prior to twenty-three years of age and immediately upon cessation of his active duty in the armed forces, unless there are other total dependents entitled to the *death benefit* under this chapter. Section 287.240(4)(a) and (b).

These are the cessation of benefit provisions the Second Injury Fund would have this Court apply to the disability benefits awarded to Respondents under the unrelated death provisions of Section 287.230.2. The cessation of benefit provisions only apply to death benefits per the plain language of Section 287.240(4)(a) and (b).

Sub-section (b) of Section 287.240(4) further specifies the benefits to which that cessation provision applies. Sub-section (b) is restricted by the plain language of the statute to those benefits “provided in this paragraph.” The permanent total disability compensation awarded to Respondents is authorized by Section 287.230.2 and not Section 287.240(4)(b).

The distinction between “death benefits” and “permanent total disability compensation” is made abundantly clear by the plain language of Section 287.240(7)

which reads: [a]ll *death benefits* in this chapter shall be paid in installments in the same manner as provided for *disability compensation*.” Section 287.240(7). The clarity provided by this paragraph is dispositive. The cessation of benefit provisions undoubtedly only apply to the death benefits to which they refer. Had the legislature intended the cessation of benefit provisions to apply to permanent total disability compensation, they would have said so.

The award of *permanent total disability compensation* to these Respondents in their capacity as the *employee* is not affected by the cessation of benefit provisions set forth in Section 287.240(4)(a) & (b). Those cessation of benefit provisions are only applicable to “death benefits” arising from an injury-related death. In this case, Respondents have stepped into the “employee” shoes upon the unrelated death of the injured employee and together have become the employee for purposes of receiving permanent total disability compensation for their lifetime because they are deemed to have the same rights as the employee under the law. The award of the Commission should be affirmed.

The Gervich holding is consistent with Schoemehl but White is an anomaly:

The Second Injury Fund also argues that the Commission’s decision in this matter is contrary to *White v. University of Missouri*, 375 S.W.3d 908 (Mo. App. W.D. 2012) and *Gervich v. Condaire, Inc.*, 370 S.W.3d 617 (Mo. banc 2012). *White* - yes. *Gervich* - no, not really.

The Second Injury Fund does find limited support for it’s argument from the appellate court in *White*. The Western District of the Missouri Court of Appeals seems to rely heavily on footnote 5 of *Gervich* to support the legal analysis set forth in the *White* decision. That footnote states:

Although section 287.240(4) provides that dependency is established at the time of the injury, the statute further provides that a dependent spouse's entitlement to benefits ceases if the spouse dies or remarries.

Gervich, 370 S.W.3d at 622, n. 5. The language of the footnote (recited above) does not track the language of Section 287.240(4), the statute referenced in the footnote. Section 287.240(4) is specific to “death benefits” and does not refer to “benefits” generically. If footnote 5 of the *Gervich* opinion (recited above) was meant to suggest that *Schoemehl* benefits under Section 287.230.2 are subject to the footnote language - that would be inconsistent with the ultimate holding in *Gervich* as Ms. Gervich was found to be “entitled to continued payment of her husband’s permanent total disability benefits *for the remainder of her life.*” *Id.* at 623.

The court in *White* took the footnote language of *Gervich* to mean something it couldn't - that the cessation of benefit provisions of sub-paragraph (4)(a) of the injury-related death statute (Section 287.240) apply to something more than the death benefits to which they refer. In doing so, the *White* court stated that: “Deborah Gervich, as Gary Gervich’s surviving widow and sole dependent at the time of his injury, was entitled to receive Gary’s disability benefits until such time as she dies or remarries.” *White* 375 S.W.3d at 911. The analysis of the court in *White* is wrong. That court misconstrues Section 287.240 and improperly applies the cessation of benefits language to a death unrelated-to-accident case. Ms. Gervich was found to be entitled to “her husband’s permanent total disability benefits *for the remainder of her life.*” *Gervich* 370 S.W.3d at 623. (emphasis added)

Respondents urge this Court to find that *White* was wrongly decided; that the

cessation of benefits provisions of the injury-related death statute, subsections (a) and (b) of Section 287.240(4), are limited to “death benefits” which are paid to dependents as the result of an injury-related death and not to *Schoemehl* disability benefits paid to dependents-as-employees pursuant to the unrelated-death provisions of Section 287.230.2.

CONCLUSION

The benefit cessation provisions within Section 287.240(4) are restricted to death benefits paid to dependents of employees who suffer work-related injuries which result in death. Application of the benefit cessation provisions of Section 287.240(4)(a) and (b) to the disability compensation awarded these Respondents under Section 287.230.2 is not appropriate. The arguments of the Second Injury Fund urging such application are without merit. The Commission's award of permanent total disability benefits to Lee Spradling, Brittinee Spradling and Marinda Spradling for their lifetimes should be affirmed by this Court.

Respondents request that the award of the Commission be affirmed in all material respects and for such other and further relief the Court may deem appropriate under the circumstances.

Respectfully submitted,

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CERTIFICATE OF COMPLIANCE

I, Sheila Rae Blaylock, attorney for Respondents Lee Spradling, Brittinee Spradling and Marinda Spradling, certify that the foregoing Substitute Respondents' Brief complies with the limitations contained in Rule 84.06(b) and that the number of words in the foregoing brief, as determined by the word processing software is: 3846 words and 386 lines. This brief contains the information required by Rule 55.03 together with the signature of the undersigned

Dated this 19th day of August, 2013.

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CERTIFICATE OF SERVICE

The undersigned certifies that an electronic copy of the foregoing brief and appendix were served this 19th day of August, 2013 by email message to the attorney of record for each party as follows:

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